V. GOVINDARAJ

v.

PRESIDENT, MALAYSIAN INDIAN CONGRESS & ANOR.

HIGH COURT MALAYA, KUALA LUMPUR
ZAKARIA YATIM J
[SUIT NO. A16 OF 1983]
30 DECEMBER 1983

ADMINISTRATIVE LAW: *Application for declarations, injunction and damages - Suspension of plaintiff from membership by President of MIC - Confirmation of suspension on appeal to Central Working Committee - Breach of principles of natural justice - Judge in own cause - Lack of locus standi - No reasonable opportunity given to be heard - Bias.*

STATUTORY INTERPRETATION: *Maxim - Intention of parties.*

The plaintiff sought declarations that the decision of the Central Working Committee (CWC) of the Malaysian Indian Congress (MIC) confirming the 1st defendant's decision to suspend the plaintiff from membership of the MIC for 12 months and that his suspension from the MIC were null and void and contrary to the principles of natural justice. The plaintiff also sought an injunction to restrain the 1st defendant and the MIC from interfering in his continued membership of the MIC and in addition asked for damages.

On 26 March 1983 the plaintiff was informed by letter that the 1st defendant was suspending him from membership of the MIC. On appeal to the CWC, the decision was affirmed by the CWC. The plaintiff's allegations were that the 1st defendant was the accuser, judge, jury and executioner in his own cause when he sat as chairman of the CWC which met on 10 April to decide on the appeal; that the CWC was not properly constituted as one of its members, P. Krishnan, had no *locus standi* to sit on the CWC; that the plaintiff was not given a reasonable or adequate opportunity of being heard and that the 1st defendant was biased when presiding at the CWC and the other members could not have given their decision on the appeal freely and fairly.

Held:

A. Preliminary issues

[1] The 1st defendant was rightly cited as a party to the proceedings.

[2] The plaintiff had exhausted his local remedies before taking the action. He had satisfied his contractual obligation under the MIC Constitution and the only remedy left was in the Court of Law. *(Datuk Pasamanickam v. Agnes Joseph* [1980] 2 MLJ 92; *Thanmalingam v. Sambanthan* [1961] 1 MLJ 63).

B. Judge in his own cause

[1] The mere fact that the 1st defendant was an accuser, judge and jury did not *per se* render the CWC proceedings null and void. The 1st defendant was acting in pursuance of the provisions of the MIC Constitution. In a domestic body, it is quite permissible to provide in its constitution that the President should initiate a disciplinary proceeding against its member and act as an accuser and subsequently sit as a judge (*Maclean v. The Workers' Union* [1929] 1 Ch. 602 at 626; *R.v. Brewer, Ex-parte* RENZELLA [1973] VR 375; *The Queen v. Medical Board of South Australian Ex-parte S.* [1976] SASR 360; *Builders Registration Board of Queensland and Another v. Rauber* [1983] 57 ALJR 376 at 377).

[2] However, the 1st defendant had not acted in good faith when exercising his functions under the MIC Constitution. Persons who are, or who have acted so as to appear to be biased should not take part in a decision to expel a member (*Australian Workers' Union and Others v. Bowen and Others* (No. 2) [1948] 77 CLR 601, 631; *Ethell v. Whalan and Others* [1971] 1 NSWLR 416, 422).

[3] The evidence clearly showed that there was not only real likelihood of bias but also actual bias on the part of the 1st defendant though in Malaysia it is sufficient to apply the test of real likelihood of bias. *(Chong Kok Lim and Ors. v. Yong Su Hian* [1979] 2 MLJ 11; *Australian Workers' Union v. Bowen (supra)).*

[4] The fact that the 1st defendant presided at the meeting in the circumstances vitiates the proceedings even assuming that he did not take any part in the proceedings. Under the MIC Constitution, it was not mandatory that the President should chair all the meetings of the CWC. The maxim *"Expressio unius est exclusio alterius"* should be used with great caution. What is important is to examine intention of the parties by looking at the MIC Constitution itself (*Dickason v. Edwards & others* [1909] 10 CLR 243, *Australian Workers' Union v. Bowen & Others (supra)).*

[5] In the circumstances of the case there was no waiver by the plaintiff of the right to object to the 1st defendant chairing the CWC meeting. Where a person is not represented by Counsel and he is not aware that he is entitled to object, then, if he allows the proceedings against him to go on there is no waiver on his part. *(R. v. Essex Justices Ex-parte Perkins* [1972] 2 KB 475; *Dickason v. Edwards (supra)).*

C. Denial

[1] The failure on the part of the CWC to give the plaintiff an opportunity to plead in mitigation was contrary to the principles of natural justice and the confirmation by the CWC of the suspension was null and void *(Hall v. New South Wales Trotting Club Ltd.* [1977] NSWLR 378).

[2] The briefing of the CWC on the charges in the absence of the plaintiff was, however, in the circumstances of the case, proper.

[3] Further the fact that the plaintiff was not given all the supporting documents in the circumstances of the case did not violate any principle of natural justice *(Lim Ko and Anor. v. Board of Architects* [1966] 2 MLJ 80, 86).

D. Improper constitution of the CWC

[1] P. Krishnan had *locus standi* to sit in the CWC on the 10 April. As a MIC State vice-chairman he was entitled under the MIC Constitution to sit in the CWC in the absence of the MIC State chairman.

[2] Further there was no evidence of bias on the part of P. Krishnan when he sat at the CWC.

E. Declarations sought

[1] The Court had jurisdiction to declare that the hearing of the plaintiff's appeal by the CWC was null and void.

[2] It had, however, no jurisdiction to declare that the suspension of the plaintiff by the 1st defendant was null and void. It is not the function of the Court to determine questions relating to sufficiency of evidence in support of a suspension. The decision of a domestic tribunal cannot be attacked on the ground that it is against the weight of evidence. (*Australian Workers' Union v. Bowen (supra); Maclean v. The Workers' Union (supra)*).

F. Injunction sought

It was not proper for the Court to grant the injunction sought as this would amount to interference with the affairs of the MIC without any valid reason.

G. Claim for damages

The plaintiff had not suffered any loss and was not entitled to any damages. Order made declaring decision of the CWC to confirm suspension null and void.

Cases also referred to:

Maloney v. New South Wales National Coursing Association Ltd. [1978] 1 NSWLR 161
Dale v. New South Wales Trotting Club Ltd. and Others [1978] 1 NSWLR 551
The Queen v. Australian Stevedoring Industry Board and Others [1953] 88 CLR 100
Cains v. Jenkins and Others [1979] FLR 188
Re Schabas [1974] 5 DLR 495
R. v. Byles and Others; Ex-parte Hollidge [1913] 108 LJ 270
R. v. Justice of Richmond [1860] 24 JP 56
Ex-parte the Parish of Ilchester [1861] 25 JP 56
R. v. Magistrates' Court at Lilydale: Ex-parte Ciccone [1861] 25 JP 56
R. v. Willaims & Others (Justices of Swansee) Ex-parte Phillips [1914] 1 KB 608
University of Ceylon v. Fernando [1960] 1 ALL Er 631

Legislation referred to:

Societies Act 1966, s. 9 (c)

Other sources referred to:

Judicial Review of Administrative Action, de Smith, 4th Edn., pp. 256, 264-265
New Straits Times, 8 April 1983, p. 40
Broom's Legal Maxim, 9 Edn., p. 421
Judicial Review, de Smith's, p. 216.

For the plaintiff - Karpal Singh; M/s. Karpal singh & Co.
For the 1st defendant - C.V. Das; M/s. Shook Lin & Bok
For the 2nd defendant - D.P. Vijendran; M/s. D.P. Vijendran Associates

JUDGMENT

Zakaria Yatim J:

In this suit, the plaintiff is seeking, firstly, a declaration that the decision of the Central Working Committee (CWC) of the Malaysian Indian Congress (MIC.) made on 10 April 1983 confirming the first defendant's decision to suspend the plaintiff from membership of the MIC for a period of twelve months commencing from 26 March, 1983, is null and void and contrary to the principles of natural justice. Secondly, he is seeking a declaration that his suspension from the MIC is null and void being contrary to principles of natural justice. The plaintiff is also asking the Court to grant an injunction to restrain the first defendant and the MIC from interfering in the plaintiff's continued membership, privileges, duties, obligation and positions held in the MIC. In addition, the plaintiff is asking for damages, costs, and other reliefs as the Court may deem fit.

From the pleadings, the following facts are not in dispute. The plaintiff is a member of Parliament for Port Klang. He is the national Vice-President of the MIC, the Chairman of the Selangor State MIC and the Chairman of the Batu Caves Branch of the MIC. The first defendant is the president of the MIC. The second defendant, who is the Secretary-General of the MIC. is sued as the public officer of the MIC pursuant to s. 9(c) of the Societies Act, 1966 (No. 13 of 1966). By a letter dated 26 March, 1983, the first defendant suspended the plaintiff from membership of the MIC pursuant to the provisions of Article 5(10)(a) of the

MIC Constitution. Such suspension was for a period of twelve months commencing from 26 March 1983. The plaintiff, acting under the provisions of Article 5(10)(b) of the MIC Constitution duly made a written appeal by a letter dated 27 March 1983 to the CWC. By letter dated 2 April 1983, the Secretary-General of the MIC informed the plaintiff of a proposed meeting of the CWC on 10 April 1983, at 9.30 a.m. and that one of the items on the agenda was the plaintiff's suspension by the first defendant. The plaintiff was further informed to be present at the 7th Floor, Menara Manickavasagam at 9.30 a.m. if he wished to be heard with regard to his explanation to the CWC. At the said meeting of the CWC, the plaintiff explained the various allegations made against him as contained in the suspension letter of 26 March 1983. The CWC that met on 10 April 1983, included one P. Krishnan. He was Acting Chairman, Selangor MIC., after the plaintiff had been suspended by the first defendant on 26 March 1983. By letter dated 16 April 1983, the Secretary-General of the MIC duly informed the plaintiff that the CWC had considered the plaintiff's letter of appeal and the views expressed by the plaintiff at the said meeting but, after careful consideration, had unanimously decided to fully endorse the first defendant's decision to suspend the plaintiff from his membership of the MIC.

In his statement of claim, the plaintiff alleged that the decision of CWC dated 10 April 1983 confirming the suspension of the plaintiff by the first defendant was null and void and contrary to the established principles of natural justice. He made this allegation on the following grounds. Firstly, he alleged that the first defendant, after having initially suspended the plaintiff, sat as Chairman of the CWC, which met to consider the plaintiff's appeal thereby becoming accuser, judge, jury and executioner in his own cause. Secondly, the CWC was not lawfully constituted in that it included one P. Krishnan who had no *locus standi* to sit on the CWC. Thirdly, the plaintiff was not given a reasonable or adequate opportunity of being heard. Fourthly, when presiding at the CWC meeting on 10 April 1983, to hear the plaintiff's appeal the first defendant was biased and the other members of the CWC could not have given their decision on the appeal freely and fairly.

The defendants denied each and every allegation as stated in the preceding paragraph and put the plaintiff to strict proof thereof.

It will be noted that this suit was brought about by the plaintiff against the first and second defendants. The first defendant is sued in his capacity as President of the MIC. Counsel for the first defendant, in his written submission at the end of the case, said that the first defendant should not have been made a party to these proceedings. According to him, the plaintiff's complaint was essentially against the composition of the CWC that heard his appeal and the MIC Constitution that provides for that composition. It was his contention that the appropriate defendants in this case would be the members of the CWC, which is the domestic tribunal, and the second defendant, who is the public officer of the MIC. In support of his contention, he said that the plaintiff's suit is based on a contract. The MIC Constitution constitutes a contract between the party and its members and he cited *Datuk Pasamanickam v. Agnes Joseph*, [1980] 2 MLJ 92 as an authority for this proposition. He, therefore, submitted that in a claim based on contract, the only necessary parties are the parties to the contract and in the instant case, the plaintiff and the MIC. Counsel for the plaintiff submitted that the parties are the proper parties in this case. In any case, he said, the first defendant should have raised this point at the commencement of the proceedings and not after the close of the case. In my opinion, the first defendant was rightly cited as a party to the proceedings. As President of the MIC, he initiated the suspension of the plaintiff and subsequently, in the same capacity, he chaired the meeting of the CWC on 10 April 1983, when hearing the plaintiff's appeal against the decision of the President to suspend him.

Before proceeding to examine the reliefs sought by the plaintiff in this case, the Court must first determine whether the plaintiff can seek such reliefs. The question, therefore, is whether the plaintiff has exhausted all the domestic remedies under the MIC Constitution. It is essential that the plaintiff should first observe his contractual obligation under the MIC Constitution before he seeks any remedy in the Court. Article 15(4) of the MIC Constitution explicitly states as follows:-

> Every member shall be bound by the decision of the Central Working Committee in matters relating to his rights, obligations, duties and privileges as a member of the Congress. If he resorts to court proceedings in respect of his rights, obligations, duties and privileges or on behalf of any other members or in respect of the rendering or meaning of the provisions of this Constitution without first referring to the Central Working Committee or in violation of any decision or directive of the Central Working Committee, he shall *ipso facto* cease to be a member of the Congress and shall not be entitled to exercise any of the rights of a member.

It has been held by the Federal Court in *Datuk Pasamanickam's case, supra.*, that this article in the MIC Constitution provides, as a first step, that reference to the CWC is a condition precedent before resorting to Court proceedings. In that case, Raja Azlan Shah CJ, (as he then was), in delivering the judgment of the Court, said:

> It is trite law that the relationship between the Malaysian Indian Congress (a registered society under the Societies Act) and its members is based on contract and the terms of the contract as embodied in the Malaysian Indian Congress Constitution will *prima facie* be binding on the parties. Article 15(4) of the said Constitution impliedly forbids members from resorting to Court proceedings in matters relating to their rights, obligations, duties and privileges unless and until such matters are first referred to the Central Working Committee.

In *Thanmalingam v. Sambanthan* [1961] MLJ 63 Thomson CJ (as he then was), also held that under Article 5 of the MIC Constitution a member undertook not to pursue his remedy of having recourse to the Court until he has exhausted his remedies under the Constitution, that is, until he has made his appeal to the Working Committee.

In view of the above authorities, it is clear that the plaintiff has satisfied his contractual obligation under the MIC Constitution. After receiving the suspension letter from the first defendant, he wrote a letter [AB4] to the CWC appealing against the decision of the first defendant. His appeal was duly heard by the CWC on 10 April 1983. By a letter dated 10 April 1983, the Secretary-General of the MIC informed him that his appeal had been dismissed by the CWC. It is now proper, therefore, for the plaintiff to seek his remedy in the Court.

Counsel for the second defendant submitted that the plaintiff had not exhausted his local remedies under the MIC Constitution before taking the present Court action. According to him, what was decided at the CWC meeting on 10 April 1983 were the substantive charges made against the plaintiff in the suspension letter. The issue that is raised in the present suit is that the CWC had acted in breach of natural justice in confirming the plaintiff's suspension. He added that if the plaintiff was aggrieved by the procedure adopted by the CWC during his appeal, the plaintiff should raise the issue at the CWC meeting. The plaintiff could also refer the question of bias to the CWC. According to him, it was only after the plaintiff had referred these matters to the CWC that he could seek remedy in the Court. Counsel for the plaintiff disagreed with this submission. According to him, the condition precedent before resorting to Court proceedings had been satisfied. I agree with the view of Counsel for the plaintiff. The suggestions made by Counsel for the second defendant are not tenable. It would be a futile effort on the part of the plaintiff to go to the CWC again

and tell them that they had violated the principles of natural justice, that they were biased or that they were wrongly constituted. The CWC would certainly not accept such allegations from the plaintiff. So, as stated earlier, the only remedy the plaintiff has is in the Court of Law.

Since the plaintiff had exhausted his remedies under the MIC Constitution, the Court may now examine whether the first defendant together with the CWC had acted contrary to the principles of natural justice. See *Datuk Pasamanickam's* case, *supra*, at p. 96.

In his statement of claim, the plaintiff alleged that the first defendant, after having initially suspended the plaintiff, sat as Chairman of the CWC when considering the plaintiff's appeal, and thereby became accuser, judge, jury and executioner in his own cause.

In his letter suspending the plaintiff from membership of the MIC, the first defendant incorporated seven charges against the plaintiff and stated that these charges had been proved to his satisfaction. In these charges, the first defendant alleged that (a) the plaintiff had failed to account for a sum of RM5,000 which was the proceeds of the sale of dinner cards; (b) that the plaintiff had wrongfully kept party's money in the sum of RM3,391 for a period of nine months; (c) the plaintiff failed to submit a sum of RM1,000 given by Sungei Rambai Branch of the MIC to MIC Headquarters; (d) the plaintiff failed to remit to MIC Headquarters a sum of RM601 which he received from the Samy Road Branch of the MIC; (e) the plaintiff directed his Treasurer not to submit Selangor MIC State accounts contrary to the decision of the CWC made on 12 February 1983; (f) that the plaintiff attended a cultural function organized by another political party, KIMMA; and (g) finally the plaintiff wrote a letter to the Prime Minister in March 1983 and this letter had damaged the standing of the leadership of the party as well as the image of unity of the MIC. Having stated the charges, the first defendant stated that any of the charges would be sufficient to warrant a disciplinary action against the plaintiff. The first defendant added that "In your case your position as Vice-President and Chairman of the State makes all the offences unpardonable".

From the suspension letter it is clear that the first defendant set out the seven charges against the plaintiff and on the basis of these charges he suspended the plaintiff for a period of twelve months. He is, therefore, the accuser in this case. When he sat as Chairman of the CWC on 10 April 1983, when the plaintiff's appeal was being heard, the first defendant was indeed acting as an accuser, judge and jury.

The mere fact that the first defendant was an accuser, judge and jury, when he presided the meeting of the CWC on 10 April 1983, does not necessarily render the proceedings of the CWC null and void.

Firstly, the first defendant was acting in pursuance of the provisions of the MIC Constitution. Under Article 5, Clause 10(a), he had the power to suspend a member of the MIC for a period not exceeding twelve month. Article 10, Clause 8(a) also provides that the President shall preside at all meetings of the CWC.

Article 5, Clause 10(a) states:

> (10)(a) The President of the Congress shall have the power to suspend a member from his membership for a period not exceeding twelve months, if he is satisfied that such member has acted in a manner detrimental to the Congress, provided always that the President shall notify the member concerned in writing of his decision suspending his membership.
>
> (b) Within 14 days of receipt of such notice the member suspended shall have the right to appeal in writing against the decision of the President to the Central Working Committee".

Article 10, Clause (8)(a) of the MIC Constitution states:

> The President shall preside at all meetings of the Central Working Committee and General Assembly of the Congress and shall be responsible for the proper conduct of all such meetings provided that the General Assembly may be presided over by a Speaker at the option of the President. He shall have a casting vote.

In a domestic body, such as the MIC, it is quite permissible to provide in its constitution that the President should initiate a disciplinary proceeding against its member and act as an accuser and subsequently sits as a judge in the CWC to hear the appeal. See *Maclean v. The Workers' Union* [1929] 1 Ch. 602 at 626, *R. v. Brewer; Ex-parte RENZELLA* [1973] VR 375, *The Queen v. Medical Board of South Australian Ex-parte S.* [1976] SASR 360, *Builders' Registration Board of Queensland and Another v. Rauber* [1983] 57 ALJR 376 at 377.

But, in exercising his function as an accuser and a judge under the MIC Constitution, the President must act in good faith. He must not be biased against the member who is the subject of the disciplinary proceedings. In *Australian Workers' Union and Others v. Bowen and Others* (No. 2) [1948] 77 CLR 610 at 631 Dixon J said:

> It is not in accordance with the principles of natural justice to have present as a member of the tribunal a person who has promoted the charge and supports it as the prosecutor or one who is invincibly biased against the accused as a result of his participation in the controversy ... If a person disqualified by such consideration sits with the tribunal and takes part in the decision, that is enough to vitiate it...

See also *Ethell v. Whalan and Others* [1971] a NSWLR 416 at 422, where Hope J said:

> There is no doubt that in general terms, persons who are, or who have acted so as to appear to be, biased should not take part in a decision to expel a member ...

The plaintiff, in his statement of claim, alleged that when presiding at the CWC meeting on 10 April 1983 to hear the plaintiff's appeal, the first defendant was biased.

The question to be considered now is whether the first defendant was in fact biased, against the plaintiff and, if so, whether such bias rendered the proceedings of the CWC on 10 April, 1983, a nullity.

Before considering the facts of the present case, it is necessary to examine what is in law, the proper test for bias in respect of a domestic tribunal such as the CWC of the MIC

Counsel for the first defendant submitted that the appropriate test for bias in a domestic tribunal is "actual bias" and not "real likelihood" or "reasonable suspicion" of bias. According to him the "actual bias" test is the more realistic test in the case of voluntary organizations, because, in domestic organizations, adjudicators are likely to have pre-disposed views being familiar with the issues and the accused persons. In support of his submission, he relied on a number of Australian cases and a Canadian case.

I shall now examine these cases briefly.

The first case is *Maloney v. New South Wales National Coursing Association Ltd.* [1978] 1 NSWLR 161. In this case the plaintiff sought a declaration that certain resolutions passed by the committee of the defendant company were null and void. According to the resolutions, the plaintiff had been guilty of conduct, which, in the opinion of the committee was unbecoming of a member and that he should, on that account, be expelled from the Company and his name expunged from the register of members. At the trial, the Judge found that, as a result of a series of events involving the plaintiff and a member of the Committee named

Phillips, a fair-minded person might reasonably suspect that Mr. Phillips would not sit in judgment with an unbiased mind. He accordingly made orders nullifying both resolutions. The Court of Appeal held that where:

> ... the executive body of a private organization is also the adjudicating body, the implication is rresistable that facts which might lead to a suspicion of bias against a member of the committee do not disqualify him as adjudicator ... The only qualification ... is that members have not agreed to subject themselves to the adjudication of those who have developed an actual *bias* ...

supra., p. 172. The orders of the trial Judge were accordingly set aside.

The second case is *Dale v. New South Wales Trotting Club Ltd. and Others* [1978] 1 NSWLR 551. The plaintiff, a bookmaker licenced by the New South Wales Club was charged with offence under the rules of Trotting and was disqualified for life by a committee of the Stewards of the Club. This decision was confirmed by the Club's Appeal Committee. The bookmaker alleged that during the enquiry there was reasonable suspicion that the Committee had surrendered its responsibilities to counsel assisting in its deliberations. The Court held that the decision of the domestic tribunal would stand unless it could be established that there was actual bias.

The next case is *The Queen v. Australian Stevedoring Industry Board and Another* [1953] 88 CLR 100. In this case, the person, who was to hold a quasi-judicial enquiry spoke to the press about the subject matter of the enquiry. The Court held that he was not disqualified from holding the enquiry. He might be disqualified only if it could be shown that there was real bias.

Another Australian case is *Cains v. Jenkins and Others* [1979] FLR 188. In this case, disciplinary proceedings were taken against Cains. He was asked to show cause as to why he should not be removed from position of branch secretary. Before the hearing, he had antagonized some of the members of the disciplinary committee. He was found guilty and dismissed as a branch secretary. Cains alleged that some of the charges were signed by persons who were prejudiced against him. At the hearing, he was not allowed a legal adviser to defend him. On these grounds he complained that he was denied his rights under the rules of natural justice. The Court held that the proceedings were not contrary to natural justice and there was no bias. Keely J said:

> In my opinion where actual bias on the part of persons sitting on a domestic tribunal has not been established a claimant ... cannot establish that he has been denied natural justice by showing only that fair-minded persons might entertain a reasonable apprehension that members of the domestic tribunal would not act with unbiased minds. *supra,* at p. 201.

The other case, *Re Schabas* [1974] 5 DLR 495, is a Canadian case, where the Court said:

> subject to evidence of actual bias, I am of opinion that the Court should be reluctant to say that a presumption of bias can arise in so far as it relates to the personnel of quasi-judicial body where the composition of the tribunal is specifically authorised by the Legislature.

Apart from the cases, Counsel for the first defendant also relied on the following passage from de Smith's *Judicial Review of Administrative Action,* fourth edition, at page 256:

> Finally, the administration of internal discipline in educational institutions, trade unions, clubs, and even professional associations is apt to present special problems. Those who have to make decisions can hardly insulate themselves from the general ethos of their organization;

> they are likely to have firm views about the proper regulation of its affairs, and they will often be familiar with the issues and the conduct of the parties before they assume their role as adjudicators. Application of the rules against interest and bias must be tempered with realism; for instance, it may, be right to require evidence of actual bias rather than mere likelihood of bias before a dicision is set aside by a Court.

The term "actual bias' has not been expressly defined. In *Maloney's case, supra.* at p. 172, Glass J.A. described "actual bias" as the type of bias "which no evidence or argument is likely to overcome." In *The Queen v. Australian Stevedoring Industry Board, supra,* at p. 116, the Court said:

> But when bias of this kind is in question, as distinguished from a bias through interest, before it amounts to a disqualification it is necessary that there should be strong grounds for supposing that the judicial or quasi-judicial officer has so acted that he cannot be expected fairly to discharge his duties. Bias must be 'real'. The officer must so have conducted himself that a high probability arises of a bias inconsistent with the fair performance of his duties, with the result that a substantial distrust of the result must exist in the minds of reasonable persons.

In *Australian Workers' Union v. Bowen. supra.* at p. 631, Dixon J used the expression "invincibly biased." This expression has been defined by Sweeney and St. John JJ in *Cains v. Jenkins, supra.,* at p. 195, where it was stated that "`invincible must in the circumstances mean a bias that is incapable of being remedied by reason or argument during the period up to the making of the tribunal's decision." See also de Smith's *Judicial Review, supra.,* at pp. 264 - 265.

The Australian and Canadian cases cited by Counsel for the first defendant are indeed very persuasive authorities. But this Court, however, is bound to apply the test of "real likelihood of bias" as laid down by the Federal Court in *Chong Kok Lim and Ors. v. Yong Su Hian* [1979] 2 MLJ 11. In that case, the Federal Court was considering the question of the validity of the respondent's expulsion from membership in the Perak Chinese Association, which is a domestic voluntary organization established by contract. The respondent was expelled by a resolution of the Executive Committee on 5 April, 1976. The resolution was confirmed by an Extraordinary General Meeting of the members of the Association of 30 May, 1976. The reason for the expulsion was the allegation that the respondent had used the name of the Association without authority to print documents of the Association for his own private use. The respondent applied to the High Court to set aside his expulsion on the ground that the resolution was *ultra vires* and in breach of the rules of natural justice. The High Court held that the resolution which expelled the respondent was null and void. The Appellant appealed to the Federal Court against the decision of the High Court. Abdoolcader J (as he then was), who sat in the Federal Court, delivered a lenghty but comprehensive judgment. After touching on the other basic issues raised in the appeal, he then touched on the questions of bias. He examined the facts leading to the expulsion of the respondent and reached the following conclusion:

> I am accordingly of the view that there was not only reasonable suspicion but also real likelihood of bias on the part of the first appellant in this case ... There was, as I have discoursed, at both the Executive Committee meeting on 5 April and the Extraordinary General Meeting on 30 May 1976, a total disregard of the fundamentals of fair play in action as to notice, hearing, due enquiry and also bias, rendering the purported expulsion of the respondent wholly invalid.

Chang Min Tat FJ, who sat in the panel, agreed with the judgment of Abdoolcader J. The other Judge in the panel, Syed Othman FJ appeared to agree with Abdoolcader J when he said:-

In the present case, fair play can hardly be said to exist.

In the instant case, the evidence clearly shows that there was not only real likelihood of bias but also actual bias on the part of the first defendant.

In his letter suspending the plaintiff from membership of MIC, the first defendant, after stating the seven charges against the plaintiff said, "In your case, your position as Vice-President and Chairman of the State makes all the offences unpardonable." The first defendant had formed a definite opinion that the plaintiff was guilty of the offences stated in the charges and that he could not be pardoned in view of his position as Vice-President and Chairman of the State MIC. The use of the term "unpardonable" clearly indicates that should the CWC find the charges proved against the plaintiff, the question of reducing the penalty or pardoning him would not arise. Under the MIC Constitution, the CWC has the power to uphold the decision of the President to suspend the plaintiff, reverse the decision, or vary it or even pardon the plaintiff. In his evidence, DW1. the Secretary-General of the MIC and the second defendant in this case, said at p. 272 of the notes of evidence: "CWC could have lifted the suspension, affirm it or they could have affirmed it and pardon him." As President of the MIC, the first defendant must be aware of the powers of the CWC. But his view on the question of penalty was so fixed and preconceived, that despite the powers the CWC, he considered that the plaintiff should not be pardoned.

His view was also fixed that the CWC should uphold his decision to suspend the plaintiff. On 27 March 1983, in a statement he made to the press, he threatened to resign his post as President of the MIC if the CWC did not uphold his decision. This statement appeared on the front page of a Tamil daily, Thinamani dated 28 March 1983 [P34]. According to the English translation [P34T], the caption reads: "Datuk Samy Vellu - I will step down as leader if CWC. decides action against Govindaraj improper." The relevant part of the newspaper report read, "Datuk Samy Vellu said here yesterday, that he would be resigning as a leader if the CWC were to decide that his action in his capacity as MIC President, against Mr. Govindaraj was improper." Further down the report, the newspaper stated, "When asked what would he do if the CWC, upon considering Mr. Govindaraj's appeal, decides that the action taken against him was improper, he (Datuk Samy Vellu) replied that if the CWC so decides he would resign his leadership. This report was subsequently carried in the **New Straits Times**, on 8 April 1983 [P40] and in the **Utusan Malaysia** on 8 April 1983. The original report that was published on the front page of **Thinamani** on 28 March 1983, was based on a statement made by the first defendant during a press conference held on 27 March 1983 at the International Hotel, Kuala Lumpur. The **Thinamani** reporter, who was present at the press conference, was Mr. Manickam, the sub-editor of the paper (PW6). Counsel for the first defendant, in cross-examination, questioned Mr. Manickam's ability to understand the English Language as he studied only up to the Lower Certificate of Education level. But the first defendant made the statement in Tamil and in English in reply to a question by PW6. The witness said the first defendant spoke in simple English and he could understand his English. I have no reason to believe that the witness did not understand the first defendant when the first defendant made the statement in English. PW6 is a professional journalist and he did his job conscientiously. At the end of the press conference he spoke to **The Star** reporter to confirm that what he had taken down was correct. (see notes of evidence p. 121 - p. 127). PW6's evidence was corroborated by PW10, Mr. Kiriraj, a reporter with **The Star** newspaper. He was present at the same press conference and in his evidence, he said "Datuk Samy Vellu said he would step down if the CWC did not uphold his decision to suspend Mr. Govindaraj." (See p. 140 of the notes of evidence). On 31 March 1983, the **Thinamani** published an explanation by the first defendant regarding the statement he made [D35T].

But he never denied that he made such a statement. In fact in an article addressed to the first defendant, which appeared in the **Thinamani** on 10 June 1983, [P33T] the Editor of the paper wrote:

> You said you would resign as the leader if the CWC does not approve Mr. Govindaraj's suspension. You said this when talking to reporters after the meeting of the Indian Contractors was over ...
>
> And when the news was reported you did not object to it on that day. You only answered when Mr. Sivaratnam accused you of intimidating the CWC. Even then you only said that you were shocked to find something uttered casually reported in the press. You never denied saying it ...

[See also the evidence of the Editor of the **Thinamani** (PW3) in the notes of evidence, p. 109 - p. 119].

The said statement must have had an effect on members of the CWC when they met on 10 April 1983 to consider the plaintiff's appeal. According to the minutes of the meeting [AB7] the first defendant was questioned about the statement. It was stated in the minutes that "the President replied it was a complete distortion and the same newspaper carried subsequently an article denying any such statement." If the minutes are accurate then the first defendant did not give a true answer. The Court is aware that an explanation by the first defendant was published in the **Thinamani** on 31 March 1983 [D35T]. In the explanation he did not deny making the statement and there is nothing in that column to say that the newspaper denied that there was such a statement. As I said earlier, the editor of the paper in fact repeated the said statement in his article published on 10 June 1983 [P33T]. There is nothing in the minutes to indicate that the first defendant denied having made the statement. He merely told the CWC members that he did not wish to influence them in any way. In my opinion, since he did not deny making the statement, the effect of the statement still influenced members of the CWC even though he said he did not wish to influence them.

It was not disputed that when the CWC was hearing the plaintiff's appeal, the first defendant was in the chair. According to the evidence of the plaintiff, the first defendant took an active part during the proceedings, particularly with regard to charge (g) in the suspension letter. This charge was based on a letter written by the plaintiff to the Prime Minister [AB20 - AB25].

Before going further into the evidence, perhaps it is relevant to mention briefly the content of the letter. In the letter, the plaintiff made several complaints against the first defendant. He accused the first defendant of forcing him to chair a committee meeting on 15 February, 1983 contrary to the provisions of the MIC Constitution. When the plaintiff refused to do so, the first defendant threatened the plaintiff that it would take him three minutes to end the plaintiff's life. The plaintiff next mentioned in the letter that the first defendant wanted to terminate his membership from the MIC. He denied being involved with another political party namely KIMMA. The plaintiff added that the first defendant was ruining his image and political career. He added that he was afraid that the first defendant might do him physical harm. The plaintiff alleged that the first defendant had abused his powers as President of MIC and ignored the Constitution of the Party. He then asked the Prime Minister to advise the first defendant to turn to the right path.

In his evidence, the plaintiff said that the first defendant questioned him at length about the letters to the Prime Minister. The plaintiff said, "First Defendant went at length to question in respect of charge (g). He was aggressive. He was talking rough with me." (p. 12 of notes

of evidence). On 23 March 1983, the plaintiff wrote another letter to the Prime Minister withdrawing the earlier letter. This withdrawal letter was not acceptable to the first defendant. The plaintiff said:

> I submitted the withdrawal letter at the CWC meeting i.e. on 10 April 1983 which was rejected by the first defendant ... The First Defendant said angrily that the letter was not a withdrawal letter. He wanted me to withdraw the complaints contained in my letter to the Prime Minister one by one. I did not agree to that because the complaints were in fact factual. He instructed that I wrote another letter to the Prime Minister to withdraw all the complaints to the Prime Minister. I did not agree. He was very angry. First Defendant told all the members of the CWC to ask me to withdraw the complaint letter. When I refused to do so, in very angry tone he told that the withdrawal letter would not be accepted by him." (See p. 76 & p. 77 of the notes of evidence).

The plaintiff's witness, Mr. Devadoss (PW14) who sat as a member of the CWC on the date of the hearing of the appeal, confirmed, in substance, the plaintiff's evidence regarding the hearing on charge (g). PW14 said:

> First defendant told plaintiff that the letter plaintiff wrote to the Prime Minister can't be withdrawn by writing one sentence withdrawal letter. First defendant also said in plaintiff's complaint letter there were many complaints against him. If the plaintiff wanted to withdraw, the plaintiff, in his withdrawal letter should have listed the complaints and withdraw one by one.
>
> (See notes of evidence p. 158 & p. 159).

The evidence of the second defendant is consistent with the evidence given by the plaintiff and P.W. 14. The second defendant said, "... proceedings was in friendly atmosphere except in relation to charge regarding the letter to the Prime Minister. Many members were angry and emotional, possibly including the President." The minutes of the meeting of the CWC. [A.B at p. 14] also supports the plaintiff's evidence. The minutes read,

> He further said that he recently had written to the Prime Minister a letter dated 23 March 1983 withdrawing his earlier letter to the Prime Minister. The letter was handed to the Secretary General who read it out. It was noted that the letter was not a withdrawal.

According to the plaintiff, he was not able to fully present his case to the CWC and he was not happy about the whole proceedings. (p. 70 & p. 71 of the notes of evidence). While the plaintiff was still giving his explanation, the first defendant told him to leave the hall and said "You are finished." The first defendant said this in angry mood in the presence of all members of CWC. (p. 12 of the notes of evidence). PW14 also said, "At one stage, plaintiff said he wanted to stay longer and give a brief explanation. To that the First Defendant said in English, 'You are finished! You have finished." (p. 159 of the notes of evidence). The second defendant, however, said that the words used by the first defendant were "It is finished. You can go." (p. 265 of the notes of evidence). In my opinion, the plaintiff's version is a more probable version. The second defendant would certainly not admit that the plaintiff's explanation was abruptly ended by the fist defendant. Furthermore, it would not be in the interest of the defence to admit that the first defendant said "You are finished."

The evidence also shows that the first defendant played an active and dominating role at the hearing of the plaintiff's appeal at the CWC. It will be recalled that he participated actively during the discussion in respect of the letter to the Prime Minister. He also stopped the plaintiff from giving further explanation by telling him "You are finished." Mr. Devadoss (PW14) who sat in the CWC throughout the hearing of the plaintiff's appeal testified that the first defendant dominated the meeting. PW14 was certain that:

the appeal of the plaintiff would be rejected. The whole proceedings was dominated by the president with a lot of pressure put on members of the CWC as if he was bulldozing. As such, I thought the decision would be unfavourable one. The decision was not the decision of all members present including me. Many of the members of the CWC who were present were afraid to talk to the President to express their views on the matter. For example, when I wanted to express my view, the President told me that I was not a lawyer of the plaintiff and he asked me not to talk too much.
(See p.247 of the notes of evidence).

The second defendant, in his evidence, said during the hearing of the appeal, the first defendant only responded to the questions, put to him. But he did admit however, that when the letter to the Prime Minister was discussed, many members were angry and emotional, possibly including the President. (See p. 264 and p. 265 of the notes of evidence). Therefore, I have no reason to disbelieve the evidence of PW14.

Before going any further, it is necessary for me to comment on the credibility of the plaintiff as a witness and the credibility of PW14. Counsel for the first defendant, in his submission, said that the plaintiff had shown a total lack of credibility by the evidence he gave in Court. He then pointed out some inconsistencies in the evidence of the plaintiff. I have examined the whole of the evidence of the plaintiff and I have watched his demeanour in Court and I am of the opinion that he is a truthful witness. There are, no doubt, some discrepancies in his evidence, but it should not be overlooked that the plaintiff was in the witness box for ten days and he was under cross-examination by Counsel for the first defendant for six days. There is bound to be some inconsistencies and discrepancies in his evidence but I do not think these discrepancies affect the credibility of the plaintiff as a witness. With regard to PW14, Mr. V.M. Devadoss, the defence main attack on his credibility was the fact that he was once convicted for smuggling watches and diamonds into India. The witness, in his evidence frankly admitted that he was convicted for such offence. But this incident happened in April 1970, i.e. more than ten years ago and he was fined only RM500 by the Magistrate in Madras. In my view, the credibility of the witness to testify in this Court on what happened in the CWC. on 10 April 1983 should not be affected by what happened more than ten years ago. There is no evidence that he has committed any other offence since then. He is now a businessman and he has been a member of the CWC since 1981. The MIC Constitution does not prohibit him from being a member of the CWC or from holding any other office by reason of that conviction. [See Article 15(6) which states that a person is only prohibited from holding any office in the MIC within a period of three years of his conviction]. I have considered the whole of his evidence and his demeanour in Court and I have no reason to doubt his credibility as a witness. I should perhaps mention here why I ruled that the tape recording of the CWC meeting on 10 April 1983 was inadmissible at the end of the trial within a trial. Mr. Devadoss (EW1) said he taperecorded the proceedings of the CWC. Under cross-examination by the defence, he was attacked with regard to the same previous conviction. At the end of the trial within trial, Counsel for the first defendant asked the Court not to believe Mr. Devadoss's evidence because he "is a convicted smuggler." I did, in fact believe Mr. Devadoss's story about the tape. It was the evidence of Datuk Nijhar, who was called by the defence, that raised reasonable doubt in Mr. Devadoss's story. According to Datuk Nijhar, he had heard the tape and he found that the tape contained extract of a meeting held on 21st May. This was sufficient to create a reasonable doubt and I accordingly ruled that the tape was not admissible. With regard to the other witnesses, whose evidence I have referred to, I have no doubt of their credibility as witnesses. These witnesses are newspaper editors and reporters and they are impartial witnesses.

I shall now turn to the mode of decision making in the CWC with regard to the plaintiff's appeal. After the plaintiff had given his explanation, he left the meeting room. There was then a deliberation of the case among some members of the CWC to consider the case for about fifteen minutes. About eight or nine members participated in the deliberation. Then the Deputy President, Mr. Subramaniam said, "Let us confirm the suspension." The second defendant then asked the members whether they had any other views not to confirm. He waited for 10 - 15 seconds. Nobody said anything. Then he announced that the suspension was confirmed. According to the second defendant, since there were no other suggestion, he took it that the decision was unanimous. (See p. 156 & p. 263 of the notes of evidence). The decision was taken in a negative way. According to PW14, "As far as I know not all including me decided to reject the appeal." (p. 240 of the notes of evidence). He went on to say "The decision was not the decision of all members present including me ... No members objected. Members were not asked individually to give their opinion." (p. 247 & p. 248 of notes of evidence). Even Datuk Nijhar (DW4) was quite prepared to accept the explanation of the plaintiff in respect of one of the charges. (p. 284 of the notes of evidence).

It should be added here, that the plaintiff was not given an opportunity to plead in mitigation. According to the second defendant, "Nobody asked him on mitigation." In view of the seriousness of the penalty imposed on him by the first defendant - especially when the plaintiff was the Vice-President of the MIC, it would have been proper if the CWC. asked the plaintiff whether he wished to make a plea in mitigation. This, the CWC failed to do.

Having considered all the relevant evidence in this case, I am fully satisfied that there was actual bias on the part of the first defendant against the plaintiff. For this reason, the proceedings in respect of the appeal of the plaintiff in the CWC held on 10 April 1983 were vitiated.

In *Australian Workers' Union v. Bowen supra.*, the secretary of a union was entitled by its rules to sit as a member of the Union's executive council. Acting on behalf of the council, the secretary, who had been actively engaged in a controversy with certain members, presented to the council, as a "prosecutor," certain charges against those members as a result of which they were expelled from the union. As a member of the council, the secretary took an active part in the hearing of the charges. It was held by Rich, Starke & Dixon JJ (Latham CJ and William J dissenting), that the secretary was shown to be the prosecutor and also to be a person invincibly biased against the accused as a result of his participation in the controversy, and that therefore, it was not in accordance with the principles of natural justice that he should act as a member of the tribunal and the proceedings of the council were, therefore, vitiated. See judgment of Dixon J at p. 631.

In the instant case, even if the first defendant, when presiding at the meeting of the CWC, did not take any part in the proceedings relating to the plaintiff's appeal, he would still be disqualified from chairing the meeting. This is because one of the charges contained in the suspension letter relates to the letter written by the plaintiff to the Prime Minister. In that letter, it will be recalled, the plaintiff made serious allegations against the first defendant. Under the circumstances, the fact that the first defendant sat as Chairman of the CWC on the 10 April 1983 vitiates the proceedings. In *Dickason v. Edwards & Others* [1909] 10 CLR 243, the plaintiff was a member of a friendly society. Disciplinary proceedings were taken against him on the ground that he had used "various expression which may be described as vulgar abuse with particular reference to the District Chief Ranger." Under the rules of the Society, the District Chief Ranger was the Chairman of the District Judicial Committee and the District Appeal Committee. The matter was brought before the District Judicial Committee and the District Chief Ranger was present and he presided as Chairman during the proceedings. The Court held that the proceedings were vitiated.

Counsel for the first defendant argued that, under the MIC Constitution, the first defendant would chair the meeting of the CWC hearing appeals from suspension imposed by him. Article 10(8)(a) provides that the President should preside at all meetings of the CWC. According to the Counsel, this provision should be construed by using the canon of construction: *Expressiounius est exclusio alterius.* In my view this maxim should be used with great caution. What is important is to examine the intention of the parties by looking at the MIC Constitution itself. [See *Broom's Legal Maxim*, 9th Edn. p. 421]. Under the Constitution, it is not mandatory that the President of the MIC should chair all the meetings of the CWC. In his absence, the Deputy President shall chair the meeting. [See Article 10(9)]. The Deputy President was present on the day in question. According to the second defendant the Deputy President has the power of the President in the absence of the President. (See p. 162 of the notes of evidence). There was one instance previously, where the former President of the MIC decided not to chair the meeting of the CWC because he was one of the candidates nominated for election to the office of the President. [See minutes of the meeting of the CWC. held on 5th April, 1975 (P59) p.2]. In my opinion, in view of the circumstances of the case, the first defendant should not have chaired the CWC meeting when the plaintiff's appeal was heard. The fact that he presided at the meeting vitiates the proceedings even assuming that he did not take any part in the proceedings.

Counsel for both the defendants also argued that the plaintiff did not protest against the first defendant chairing the CWC meeting when his appeal was heard. They contended, therefore, that the plaintiff had waived whatever objection he might have had to the first defendant chairing the CWC meeting. According to them, he cannot now complain of a disqualifying factor to vitiate a decision just because it had gone against him knowingly acquiesced in the proceedings. In support of their argument they relied *inter alia* on *R. v. Byles and Others;Ex-parte Hollidge* [1913] 108 LJ 270; *R. v. Justice of Richmond* [1860] 24 JP 56*; Ex-parte the Parish of Ilchester* [1861] 25 JP 56 and *R. v. Magistrates' Court at Lilydale: Ex-parte Ciccone* [1861] 25 JP 56. In these cases the Court held that the failure to object resulted in a waiver. But in each of these cases, the aggrieved party was represented by a Counsel during the proceedings of the tribunal. they also cited *R. v. Williams & Others (Justices of Swansee) Ex-parte Phillips* [1914] 1 KB 608. This case is not really on point here. In this case the affidavit on which the rule *nisi* was obtained did not state that any objection to the competence of the Court was taken at the hearing before the justices, nor did it state that at the date of that hearing the applicant was without knowledge of the facts alleged to disqualify one of the justices. The Court held that this defect in the affidavit disentitled the applicant to the issue of a writ of *certiorari ex debito justitiae.* The defence also relied on the dictum of Latham CJ in *Australian Workers' Union v. Bowen, supra.,* at page 618 where he stated:

> ... but no objection was raised to Dougherty acting at the meetings in November. An objection of disqualification on the ground of bias may be waived *(Dickason v. Edwards (M).* Submission without objection to the jurisdiction, with knowledge of the facts subsequently alleged to establish bias, is *prima facie* evidence of waiver.

In my opinion, apart from knowledge of bias, the party affected must also be aware that he is entitled to make the objection. Thus, where a person is not represented by Counsel and he is not aware that he is entitled to object, then, if he allows the proceedings against him to go on, there is no waiver on his part. See *R. v. Essex Justices Ex-parte Perkins* [1972] 2 KB 475. In *Dickason v. Edwards, supra.,* the plaintiff definitely knew that he was entitled to object to the presence of the District Chief Ranger in the tribunal. Hence, his protest against the District Chief Ranger sitting in the Tribunal.

In the instant case, the plaintiff was not represented by Counsel and did not know that he was entitled to object to the first defendant chairing the CWC. In his evidence, he said, "It didn't strike me First Defendant sitting as Chairman of the Board. I was unaware I could object." (p. 12 of the notes of evidence). Under cross-examination, the plaintiff was referred to an instance, where the former President of the MIC presided over the meeting of the CWC in respect of an appeal by a member of the MIC against a suspension order made by the President. Commenting on that proceedings the plaintiff said:

> He was at that time President of the MIC During course of my time we have conducted affairs of the party in accordance with the Constitution. I have no complaint against the provision of the Constitution. If any action taken against me in accordance with Constitution, I have no ground for complaint.
> (p. 64 of the notes of evidences).

The plaintiff went on to state:

> There is nothing in the Constitution which gives me right to object any member of Central Working Committee for sitting at hearing (of) my appeal." (p. 65 of the notes of evidence). "I didn't take objection to First Defendant chairing Central Working Committee meeting when considering my appeal because it is provided in the Constitution." (p. 88 of the notes of evidence).

It is clear that the plaintiff's knowledge of his rights and obligations in the MIC was based on the Constitution. He was fully aware that under the Constitution, the first defendant was the Chairman of the CWC. There is nothing in the Constitution which suggest that he can make an objection. I am satisfied that, from the evidence, the plaintiff was not aware that he was entitled to object to the first defendant chairing the CWC when his appeal was heard. Counsel for both the defendants contended that the plaintiff was aware of his right to protest. According to them when the plaintiff appeared before the Organization and Disciplinary Sub-Committee (O.D.S.C.) on 4 March 1983 regarding his alleged involvement with KIMMA, he protested against the presence of Mr. D.P. Vijendran on the ground of bias (See P65 of the notes of evidence). The proceedings of the O.D.S.C. was different from that of the CWC. The O.D.S.C. was appointed by the CWC. It was formed on an *ad hoc* basis and the rules of procedure in the O.D.S.C. was not laid down in the Constitution. (See art. 9(12)(a) of the MIC Constitution). In the absence of any rules of procedure, the plaintiff knew that he had a right to object to the presence of Mr. D.P. Vijendran and he accordingly made the objection. But, in the CWC, where the MIC Constitution clearly states that the first defendant, as President, should sit as chairman, it is clear that the plaintiff was not aware of his right to object to the first defendant chairing the CWC meeting on 10 April 1983. Since the plaintiff did not know of his right to object, although he was aware that the first defendant was biased against him, it is my finding that there is no waiver in this case.

I shall now turn to the next point raised in the statement of claim. In para 10(c) of the statement of claim, the plaintiff further alleged that he was not given a reasonable or adequate opportunity of being heard when the CWC confirmed the first defendant's decision to suspend him.

Counsel for the plaintiff stated in his submission that natural justice might have been violated where after a finding of guilt a tribunal did not give an opportunity to a person to address the tribunal on the penalty to be imposed. It is clear that during the hearing of his appeal by the CWC, the plaintiff was not given an opportunity to address the CWC in mitigation. According to the second defendant, "Nobody asked him on mitigation." (p. 273 of the notes of evidence). The failure on the part of the CWC to give him an opportunity to plead in

mitigation is contrary to principles of natural justice and the confirmation by the CWC in respect of the penalty, namely the twelve months suspension, was null and void. See *Hall v. New South Wales Trotting Club Ltd.* [1977] NSWLR 378. See also de Smith's *Judicial Review, supra*., at p. 216.

The plaintiff also alleged that he was not given an opportunity of being heard during the meeting of the CWC before the plaintiff was called in to present his appeal. During this meeting, the procedure for the appeal was set out. Members of the CWC were also briefed on the charges and they were given supporting documents. The first defendant also clarified any points that were not clear to the members (p. 255 of the notes of evidence). In my opinion it is quite proper for the CWC to formulate the procedure for the hearing of the appeal. See *University of Ceylon v. Fernando* [1960] 1 All ER 631 at 638. The MIC Constitution also empowers the CWC to formulate such procedure [Article 9(6)]. One of the rules laid down in the procedure reads as follows :-

> ... "Before proceeding to hear the appellant, the members of the CWC were to be briefed on the complaint by the Secretary General together with supporting evidence. If the members had any doubts on the facts or evidence produced, then the members can seek clarification.

Members of the CWC sought clarification from the first defendant regarding the charges and the first defendant responded to the question. Counsel for the plaintiff argued that the clarifications sought by the CWC members from the President on some aspect of the complaints and the supporting documents in the absence of the plaintiff rendered the entire proceeding before the CWC on 10 April 1983 fatal. I am unable to accept this argument. When the plaintiff was called in to present his appeal, the second defendant explained to him the charges. He was also given the same set of supporting documents. If he had any question for the first defendant to clarify he was entitled to ask the question. But he did not ask any question to clarify the charges. In his evidence he said, "I had almost two weeks to prepare answers to the charges. I was aware of all the charges before I attended the Central Working Committee meeting." (p. 66 of the notes of evidence). I, therefore, find that the briefing was proper.

With regard to the supporting documents, the plaintiff was aware of some of them, including the suspension letter, his letter of appeal and the letter conveying the decision of the CWC (The list of supporting documents given to him and to the members of the CWC is found at p. 254 of the notes of evidence). The plaintiff did say, however, that some other documents were seen by him only on the date of the hearing. (See notes of evidence pp. 40 -41, p. 53). He probably did not see the rest of the documents. But all the documents were with him on the date of the hearing. If he wanted time to study them, he could have asked for time or even for a postponement of the hearing. But he did not make any such request. In fact, in his evidence he said, "I was ready with the answers on that day so that I didn't have to ask for postponement." (p. 66 of the notes of evidence). Here, too, I find that no principle of natural justice had been violated. *Lim Ko and Anor, v. Board of Architects* [1966] 2 MLJ 80 at p. 86.

Another point raised in the plaintiff's statement of claim is that the CWC was not lawfully constituted in that it included one P. Krishnan who had no *locus standi* to sit in the CWC Mr. P. Krishnan was the Vice-Chairman of the Selangor MIC. The plaintiff was the Chairman. When the plaintiff was suspended by the first defendant, Mr. Krishnan became Acting Chairman (See p. 11 of notes of evidence). According to the plaintiff, "Mr. Krishnan should not have attended." He admitted however that when he was "suspended he (P. Krishnan)

became Acting Chairman. As Acting Chairman he stepped into my shoes as Chairman with all attendant duties. He has to perform all the functions of the Chairman." (p. 71 of the notes of evidence). In his statement of claim (para 8) the plaintiff admitted that P. Krishnan was Acting Chairman of Selangor MIC after his suspension. The second defendant, in his evidence said that when considering the plaintiff's appeal on 10 April, P. Krishnan "was at that time Acting Chairman of the Selangor State. He became Acting Chairman as a result of Govindaraj's suspension. He was one of the persons who participated and decided on Govindaraj's appeal." (p. 263 of the notes of evidence). In my opinion, P. Krishnan was entitled to sit in the CWC. on the 10th April, 1983. He was Vice-Chairman of the Selangor MIC Under the MIC Constitution, "The State Vice-Chairman shall act for the State Chairman in the absence of the State Chairman and shall perform such functions as are normally exercised by the State Chairman." (Article 8(8)(b)).

According to the second defendant, the State Chairman automatically became a member of the CWC. In his evidence, he said:

> I summoned P. Krishnan to come to the CWC meeting on 10th. I sent notice of meeting to him. I addressed this letter to him in his capacity as Acting Chairman of Selangor State. Under MIC Constitution, State Chairman is automatically a member of CWC. Automatically Acting Chairman became member of the CWC." (See notes of evidence, p.275 - p.276).

P. Krishnan, therefore, had the *locus standi* to sit in the CWC on the 10 April. There is no evidence that he was biased when he sat at the CWC. In my view, it was proper for P. Krishnan to sit in the CWC at the hearing of the plaintiff's appeal.

In one of the prayers, the plaintiff is asking the Court to declare that his suspension from the MIC is null and void being contrary to the established principles of natural justice. It appears that in his prayer, the plaintiff is asking the Court to declare as null and void, not only the decision of the CWC which heard his appeal but also the suspension imposed by the first defendant as stated in his letter dated 26 March 1983. In his statement of claim (para 4), the plaintiff "pleads the first defendant had no adequate basis or reason to impose the suspension aforesaid on the plaintiff." It seems to me, the plaintiff is asking the Court to look into the basis or reason upon which the suspension was imposed on him. The basis upon which the first defendant decided to suspend the plaintiff were the seven charges as contained in the suspension letter. In his evidence, the plaintiff gave explanation in respect of the charges made against him. But the Court cannot decide on whether the charges have been proved against him or not. It is not the function of the Court to determine questions relating to sufficiency of evidence in support of the suspension. In *Australian Workers' Union v. Bowen, supra.*, the Court made the following decision:

> In cases involving consideration of the findings of a domestic tribunal of a voluntary association, the duty of a Court is to determine whether the tribunal has observed the rules of the association and complied with the rules of natural justice; a Court has no jurisdiction to review the finding of the tribunal only for the purposes of examining their correctness.

In his judgment, at page 628, Dixon J said:

> It is important to keep steadily in mind that we are dealing with a domestic forum acting under rules resting upon a consensual basis. It is a tribunal that has no rules of evidence ... The tests applied to juries' verdicts, namely, whether there was evidence enabling a reasonable man to find an affirmative or whether upon the evidence a finding was unreasonable, have no place in the examination of the validity of such a domestic tribunal's decisions. But the tribunal is bound to act honestly ...

In *Maclean v. The Workers' Union, supra.*, Mangham J said at page 621, of his judgment that:

> ... it is well settled by authority that the decision of such a tribunal cannot be attacked on the ground that it is against the weight of evidence ...

In view of these authorities, this Court has no jurisdiction to declare that the suspension of the plaintiff by the first defendant is null and void. The Court, however, has jurisdiction to declare that the hearing of the plaintiff's appeal by the CWC was null and void.

The plaintiff is also asking the Court to grant an injunction to restrain the first defendant and the MIC from interfering in the plaintiff's continued membership, privileges, duties, obligations and positions held in the MIC before the plaintiff's suspension. I do not think it is proper for the Court to grant such an injunction. To grant the injunction as prayed would amount to interfering with the affairs of the MIC without any valid reason.

With regard to the plaintiff's claim for damages, I do not think that he has suffered any damages as a result of the decision of the CWC on 10 April 1983. He is still a Member of Parliament for Port Klang. He still retains his post as national Vice-President of the MIC He is also the Chairman of Selangor State MIC and Chairman, Batu Caves Branch. There is no evidence that his reputation in the party was in any way affected. The resolution that was passed by the 31st General Assembly of the MIC in June 1983 expressing no confidence in the plaintiff was based on different grounds altogether and had no connection with the subject matter of the proceedings of the CWC on 10 April.

For the above reasons, therefore, my order is as follows:

(i) A declaration that the decision of the CWC on 10 April 1983 upholding the suspension of the plaintiff by the first defendant as per suspension letter dated 26 March 1983, is null and void; This declaration does not affect the suspension letter dated 26 March 1983, written by the first defendant against the plaintiff. The plaintiff is at liberty to pursue his remedies in accordance with the provisions of the MIC Constitution;

(ii) No order in respect of plaintiff's prayer for an injunction to restrain the first defendant and the MIC from interfering in his continued membership, privileges, duties, obligations and position held in the MIC;

(iii) No order as to damages; and

(iv) Costs to the plaintiff.

Also found at [1984] 1 CLJ 160